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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,608	12/31/2003	David C. Hastings	066243-0267 (146044)	8938

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EXAMINER	
MONIKANG, GEORGE C	

ART UNIT	PAPER NUMBER
2615	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/750,608	HASTINGS ET AL.	
	Examiner	Art Unit	
	George C. Monikang	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 August 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *12/2/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1 & 11 (Application No. 10/750,608, hereinafter referred to as '608) are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 & 35 of copending Application No. 10/750,493 (Hereinafter referred to as '493). Although the conflicting claims are not identical, they are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The '608 claims 1 & 11 are broader recitations of the same invention claimed in '493 claims 1 & 35. Therefore, '493 claims 1 & 35 are encompassed by '608 claims 1 & 11. It is critical that patents issuing from these applications be commonly owned to avoid potential licensees from owing license fees to two different parties.

3. Claims 21, 25, 26, 32, 34, 39 & 40 (Application No. 10/750,608, hereinafter referred to as '608) are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9, 21, 26, 29, 37, 39 & 43 of copending Application No. 10/750,493 (Hereinafter referred to as '493).

Although the conflicting claims are not identical, they are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The '608 claims 21, 25, 26, 32, 34, 39 & 40 are broader recitations of the same invention claimed in '493 claims 9, 21, 26, 29, 37, 39 & 43. Therefore, '493 claims 9, 21, 29, 37, 39 & 43 are encompassed by '608 claims 21, 25, 26, 32, 34, 39 & 40. It is critical that patents issuing from these applications be commonly owned to avoid potential licensees from owing license fees to two different parties.

4. Claims 27 & 41 (Application No. 10/750,608, hereinafter referred to as '608) are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 44 of copending Application No. 10/750,493 (Hereinafter referred to as '493). Although the conflicting claims are not identical, they are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The '608 claims 27 & 41 are broader recitations of the same invention claimed in '493 claim 44. Therefore, '493 claim 44 is encompassed by '608 claims 27 & 41. It is critical that patents issuing from these applications be commonly owned to avoid potential licensees from owing license fees to two different parties.

5. Claims 3, 9, 16, 20 & 31 (Application No. 10/750,608, hereinafter referred to as '608) are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3 & 5 of copending Application No. 10/750,493 (Hereinafter referred to as '493). Although the conflicting claims are not identical, they are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The '608 claims 3, 9, 16, 20 & 31 are broader recitations of the same invention claimed in '493 claims 3 & 5. Therefore, '493 claims 3 & 5 are encompassed by '608 claims 3, 9, 16, 20 & 31. It is critical that patents issuing from these applications be commonly owned to avoid potential licensees from owing license fees to two different parties.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albert et al, US Patent 6,264,614 B1, in view of Albert et al's background information, US Patent 6,264,614 B1 (hereinafter referred to as ABI col. 1, lines 30-54), and further in view of Brown, US Patent 5,997,476. (The Albert et al reference has been cited in IDS filed 12/2/04 by applicant.)

Re Claim 1, Albert et al discloses a portable electronic device for use in a medical monitoring system of a health care facility, the medical monitoring system generating notification messages indicating that a patient being monitored may have a condition that requires attention (*abstract: heart monitor*), a processing circuit configured to receive the notification messages indicating that the patient being monitored may have a condition that requires attention (*fig. 7: 42; fig. 3: 18; abstract*), but fails to disclose wirelessly transferring the notification messages to the portable electronic device (*ABI, col. 1, lines 44-54*), the portable electronic device comprising: an audio signal input device (*col. 1, lines 44-54*); an audio signal output device (*ABI, col. 1, lines 44-54*); a wireless transceiver (*ABI, col. 1, lines 44-54*); and to facilitate transfer of data to the audio signal output and from the audio signal input by way of the wireless transceiver (*ABI, col. 1, lines 44-54*). However, ABI does. Both Albert et al and ABI fail to disclose the data being a voice data. However, Brown does (*Brown, col. 11, lines 46-55*).

Taking the combined teachings of Albert et al, ABI and Brown as a whole, one skilled in the art would have found it obvious to modify the portable electronic device for use in a medical monitoring system of a health care facility, the medical monitoring system generating notification messages indicating that a patient being monitored may have a condition that requires attention (*abstract: heart monitor*), a processing circuit configured to receive the notification messages indicating that the patient being monitored may have a condition that requires attention (*fig. 7: 42; fig. 3: 18; abstract*) of Albert et al with wirelessly transferring the notification messages to the portable electronic device (*ABI, col. 1, lines 44-54*), the portable electronic device comprising: an audio signal input device (*col. 1, lines 44-54*); an audio signal output device (*ABI, col. 1, lines 44-54*); a wireless transceiver (*ABI, col. 1, lines 44-54*); and to facilitate transfer of data to the audio signal output and from the audio signal input by way of the wireless transceiver (*ABI, col. 1, lines 44-54*) as taught in ABI with the data being a voice data as taught in Brown (*Brown, col. 11, lines 46-55*) so to provide personal medical conditions of patients and audibly communicate queries.

Re Claim 2, the combined teachings Albert et al, ABI and Brown disclose the portable electronic device of claim 1, wherein both the notification messages and the voice data may be transferred by way of the wireless transceiver (*ABI, col. 1, lines 44-54*).

Re Claim 3, the combined teachings of Albert et al, ABI and Brown disclose the portable electronic device of claim 1, wherein the wireless transceiver uses a cellular data protocol (*Brown, col. 4, lines 55-60*).

Re Claim 4, the combined teachings of Albert et al, ABI and Brown disclose the portable electronic device of claim 1, wherein the device is configured such that if a voice communication link is established with a recipient while a notification message is being displayed, data associated with the notification message may be forwarded to the recipient (*Brown, col. 11, lines 46-55*).

Re Claim 5, the combined teachings of Albert et al, ABI and Brown disclose the portable electronic device of claim 4, wherein the device is configured such that if a voice communication link is established with a recipient while a notification message is received, data associated with the notification message is automatically forwarded to the recipient (*Brown, col. 11, lines 46-55*).

Re Claim 6, the combined teachings of Albert et al, ABI and Brown disclose the portable electronic device of claim 1, wherein the transceiver is capable of transferring voice data to an access point connected to a health care facility network (*Albert et al, fig. 3: 18; col. 7, lines 11-15*).

Re Claim 7, the combined teachings of Albert et al, ABI and Brown disclose the portable electronic device of claim 1, wherein the transceiver is configured such that a user may connect directly with a second portable electronic device (*Brown, fig. 1: 24 & 32*).

Re Claim 8, the combined teachings of Albert et al, ABI and Brown disclose the portable electronic device of claim 1, comprising a second wireless transceiver configured to transfer data (*Albert et al, fig. 4: 24*).

Claim 9 has been analyzed and rejected according to claims 3 & 8.

Re Claim 10, the combined teachings of Albert et al, ABI and Brown disclose the portable electronic device of claim 8, wherein the processing circuit is further configured to facilitate transfer of voice data to the audio signal output and from the audio signal input by way of the second wireless transceiver (*Albert et al, col. 7, lines 39-65*).

Re Claim 11, Albert et al discloses a system for establishing voice communication in a health care facility having a monitoring system that generates notification messages indicating that a patient being monitored may have a condition that requires attention (*abstract: heart monitor*) a first processing circuit configured to receive the notification messages indicating that the patient being monitored may have a condition that requires attention and to facilitate transfer of data to the audio signal output and from the audio signal input by way of the wireless transceiver (*fig. 7: 42; fig. 3: 18; abstract*); and a second processing circuit configured to receive data sent from the portable electronic device (*fig. 7: 42; abstract; fig. 3: 20; col. 7, lines 39-64*), but fails to disclose facilitating transfer of the data to a recipient. ABI discloses wirelessly transferring the notification messages to portable electronic devices (*ABI, col. 1, lines 44-54*), the system comprising: a portable electronic device, comprising an audio signal input device (*ABI, col. 1, lines 44-54*); an audio signal output device (*ABI, col. 1, lines 44-54*); a wireless transceiver (*ABI, col. 1, lines 44-54*). However, ABI does. Both Albert et al and ABI fail to disclose the data being voice data. However, Brown does (*col. 11, lines 46-55*).

Taking the combined teachings of Albert et al, ABI and Brown as a whole, one skilled in the art would have found it obvious to modify the system for establishing voice

communication in a health care facility having a monitoring system that generates notification messages indicating that a patient being monitored may have a condition that requires attention (*abstract: heart monitor*) a first processing circuit configured to receive the notification messages indicating that the patient being monitored may have a condition that requires attention and to facilitate transfer of data to the audio signal output and from the audio signal input by way of the wireless transceiver (*fig. 7: 42; fig. 3: 18; abstract*) of Albert et al with facilitating transfer of the data to a recipient. ABI discloses wirelessly transferring the notification messages to portable electronic devices (*ABI, col. 1, lines 44-54*), the system comprising: a portable electronic device, comprising an audio signal input device (*ABI, col. 1, lines 44-54*); an audio signal output device (*ABI, col. 1, lines 44-54*); a wireless transceiver (*ABI, col. 1, lines 44-54*)as taught in ABI with the data being voice data as taught in Brown (*col. 11, lines 46-55*) so to provide personal medical conditions of patients and audibly communicate queries.

Re Claim 12, the combined teachings of Albert et al, ABI and Brown disclose the system of claim 11, wherein the second processing circuit is configured to facilitate transfer of the voice data to a recipient using a telephone line (*Albert et al, col. 7, lines 45-53*).

Re Claim 13, which further recites, "Wherein the processing circuit is configured to use a private branch exchange to facilitate transfer of the voice data to a recipient using the telephone line." The combined teachings of Albert et al, ABI and Brown do not explicitly disclose a private branch exchange as claimed. Official notice is taken that both the concept and advantages of providing a private branch exchange is well known

in the art. It would have been obvious to use a private branch exchange since it is commonly used as a communication means to serve a particular office or organization.

Re Claim 14, the combined teachings of Albert et al, ABI and Brown disclose the system of claim 11, wherein the second processing circuit is coupled to the portable electronic device using a network of the health care facility (*Brown, fig. 1: 24 & 32*).

Re Claim 15, the combined teachings of Albert et al, ABI and Brown disclose the system of claim 11, wherein the second processing circuit is configured to receive a user input signal input by the audio signal input device and initiate a call to a particular recipient based on the audible user input signal (*Albert et al, col. 7, lines 39-65*).

Claim 16 has been analyzed according to claims 3 & 11.

Re Claim 17, the combined teachings of Albert et al, ABI and Brown disclose the system of claim 11, further comprising a second portable electronic device (*Albert et al, fig. 4: 26*), comprising a second audio signal input device (*ABI, col. 1, lines 44-54: all the personal computers have this feature*); a second signal output device (*ABI, col. 1, lines 44-54: all the personal computers have this feature*); a second wireless transceiver (*ABI, col. 1, lines 44-54: all the personal computers have this feature*); and a third processing circuit configured to receive the notification messages indicating that the patient being monitored may have a condition that requires attention and to facilitate transfer of voice data to the second audio signal output and from the second audio signal input by way of the wireless transceiver(*Albert et al, fig. 7: 42; fig. 3: 18; abstract: all the personal computers have this feature*); wherein the portable electronic device is

configured to transfer voice data from the first electronic device directly to the second electronic device (*Albert et al, fig. 4: 20, 24, 26*).

Re Claim 18, the combined teachings of Albert et al, ABI and Brown disclose the system of claim 11, wherein one of the first processing circuit and the second processing circuit is configured to initiate a call to a particular recipient based on a notification message received by the portable electronic device (*Albert et al, col. 7, lines 39-65*).

Claim 19 has been analyzed and rejected according to claims 4 & 11.

Claim 20 has been analyzed and rejected according to claims 3 & 11.

Re Claim 21, the combined teachings of Albert et al, ABI and Brown disclose the system of claim 11, wherein a single user input received by one of a user input device of the portable electronic device and a device used by the recipient of the voice data may be used to forward, to the recipient of the voice data, physiologic data that has been received by the portable electronic device (*Albert et al, abstract: since the sensor senses human physiology data such as heart conditions, it will thus send this data to the processing circuit*).

Re Claim 22, the combined teachings of Albert et al, ABI and Brown disclose the system of claim 21, wherein the single user input may be used to forward data that is displayed on a display screen of the portable electronic device and data that is related to the data that is displayed on a display screen of the portable electronic device (*Albert et al, abstract: since the sensor senses human physiology data such as heart conditions, it will thus send this data to the processing circuit; fig. 3: 22*).

Re Claim 23, the combined teachings of Albert et al, ABI and Brown disclose wherein the system is configured such that the portable electronic device may be used to control a wireless phone (*Brown, fig. 1: 26/32*) coupled to the portable electronic device and answer incoming calls of the wireless phone (*Brown, col. 4, lines 55-59*).

Re Claim 24, the combined teachings of Albert et al , ABI and Brown disclose the system of claim 11, wherein a notification message received by the first processing circuit includes physiological data associated with the patient who may have a condition that requires attention (*Albert et al, abstract*).

Claim 25 has been analyzed and rejected according to claims 1 & 21.

Claim 26 has been analyzed and rejected according to claims 1 & 21.

Re Claim 27, the combined teachings of Albert et al, ABI and Brown disclose the method of claim 26, wherein the physiologic data is ECG waveform data (*Albert et al, fig. 7: 30*).

Re Claim 28, the combined teachings of Albert et Al, ABI and Brown disclose the method of claim 25, wherein receiving data from a monitoring device comprises receiving data from a central station that has received the data from the monitoring device (*Albert et al, fig. 3: 18*).

Re Claim 29, the combined teachings of Albert et al, ABI and Brown disclose the method of claim 25, wherein receiving data from a monitoring device comprises receiving data from a plurality of monitoring devices adapted to monitor a same patient (*Brown, col. 17, lines 51-57*).

Re Claim 30, the combined teachings of Albert et al, ABI and Brown disclose the method of claim 25, wherein transferring voice data received from the portable electronic device to a recipient comprises transferring the voice data over a hospital network (*Albert et al, fig. 3: 18*).

Claim 31 has been analyzed and rejected according to claims 1, 3 & 21.

Claim 32 has been analyzed and rejected according to claims 1, 3 & 21.

Re Claim 33, the combined teachings of Albert et al, ABI and Brown disclose the method of claim 25, wherein transferring voice data and sending a notification message comprises transferring the voice data and sending the notification message using a same transceiver (*Albert et al, fig. 3: 20 & 22*).

Re Claim 34, the combined teachings of Albert et al, ABI and Brown disclose the method of claim 25, further comprising forwarding physiologic data to a second portable electronic device based on a user input received from the portable electronic device (*abstract; fig. 4: 26*).

Claim 35 has been analyzed and rejected according to claims 1, 4, 21 & 25.

Re Claim 36, the combined teachings of Albert et al, ABI and Brown disclose the method of claim 34, wherein the physiologic data is data associated with a notification message being displayed on the portable electronic device (*Albert et al, abstract; fig. 3: 20 & 22*).

Re Claim 37, the combined teachings of Albert et al, ABI and Brown disclose the method of claim 25, wherein transferring voice data received from the portable

electronic device to a recipient comprises identifying the recipient based on a user audio input received by the portable electronic device (*Albert et al, col. 7, lines 39-65*).

Re Claim 38, the combined teachings of Albert et al, ABI and Brown disclose the method of claim 25, further comprising transferring voice data using a wired connection to the portable electronic device (*ABI, col. 1, lines 44-54*).

Claim 39 has been analyzed and rejected according to claims 1 & 21.

Claim 40 has been analyzed and rejected according to claims 3, 11, 14, 17 & 21.

Claim 41 has been analyzed and rejected according toclaims 3, 11, 14, 17, 21 &

Re Claim 42, the combined teachings of Albert et al, ABI and Brown disclose the method of claim 40, wherein wirelessly sending a notification message to a second portable electronic device (*Albert et al, fig. 4: 2: 24 & 26*), forwarding data to the second portable electronic device (*Albert et al, col. 7, lines 39-65*), and transferring voice data comprises sending the notification message, forwarding the data, and transferring the voice data using a single transceiver of the second portable electronic device (*Albert et al, fig. 4: 2: 24 & 26; col. 7, lines 39-65*).

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Monikang whose telephone number is 571-270-1190. The examiner can normally be reached on M-F. alt Fri. Off 7:30am-5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

George Monikang

11/12/2007

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